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U.S. Department  
of Transportation

United States  
Coast Guard



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JAN 29 1997

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Ronald C. Fiore, Esq.  
Chevron U.S.A. Production Co.  
935 Gravier Street  
New Orleans, LA 70112

RE: MV94018136  
Chevron U.S.A.  
\$500.00

Dear Mr. Fiore:

The Hearing Officer, Coast Guard Atlantic Area New Orleans, Louisiana, has forwarded the file in Civil Penalty Case MV94018136 including your appeal, on behalf of Chevron U.S.A. (Chevron) as operator of the off-shore platform known as Ship Shoal Block 181 Platform-"B" (SS 181-B). The appeal is from the action of the Hearing Officer in assessing a penalty of \$500.00 against Chevron under the authority of the Federal Water Pollution Control Act (FWPCA) as amended, by the Oil Pollution Act of 1990, 33 USC 1321(b)(6)(A). The assessment was based on the finding that, in violation of 33 USC 1321(b)(3), crude oil in a quantity that may be harmful was discharged from SS 181-B on December 8, 1994. The estimated less than one gallon of crude oil that discharged into the Gulf of Mexico caused one or more of the conditions specified in 40 CFR 110.5.

On appeal, you contend that a civil penalty may not be lawfully assessed by the U.S. Coast Guard pursuant to 33 USC 1321(b)(6) for two reasons. First, you assert that the oil sheen was not a discharge within the meaning of § 1321(b)(3) in that it was associated with a produced water discharge that was in compliance with the NPDES permit authorizing the discharge. Secondly, you assert that the discharge was the result of and occurred within the scope of the relevant treatment system of an effluent authorized to be discharged by a NPDES permit. As such, you contend that the discharge met the statutory exemptions contained in the definition of discharge in § 1321(a)(2)(A) and (C). Your appeal is granted for the reasons explained below.

It is the mandate of Congress, as expressed through the Federal Water Pollution Control Act that there shall be no discharges of oil or hazardous material into or upon the waters of the United States. The Act provides that a Class I administrative penalty of not more than \$10,000.00 may be assessed against the owner, operator, or person in charge of any vessel or facility from which oil is discharged in prohibited quantities. It is not necessary to find intent or negligence, as the law prohibits any discharge of oil that may be harmful. A discharge of any amount of oil that causes a film, sheen, or discoloration upon the surface of the water may be harmful and is prohibited.



In 1978 Congress modified the definition of "discharge" under § 1321(a)(2) of the Act, thereby excluding from enforcement under § 1321(b)(6) three types of discharges. Congress further provided that the discharges excluded under § 1321(a)(2) are subject to the National Pollutant Discharge Elimination System (NPDES) enforcement provisions. See 33 USC §§ 1311 and 1319. Unless evidence contained in the record establishes that one of the specified exclusions applies, a release of oil otherwise falling within the § 1321(a)(2) definition is a "discharge" for the purposes of § 1321(b)(6). Although the Coast Guard does not have the authority to adjudicate a charge that an NPDES permit has been violated, the Coast Guard does have authority to assess a penalty under § 1321(b)(6) when a prohibited discharge has occurred. For that reason, the Coast Guard must determine whether or not there is evidence to support a claimed exclusion. Evidence of a sheen is insufficient alone for the Coast Guard to conclude that the discharge of oil was subject to enforcement under § 1321(b)(6) if, and when, a party provides evidence that the discharge was a discharge pursuant to one of the exclusions under § 1321(a)(2).

In the instant case, it is undisputed that less than one gallon of crude oil discharged from SS 181-B into the Gulf of Mexico and that the spill created a sheen on the water. The record also is undisputed that SS 181-B is a point source identified in NPDES permit GMG 290000 and that under the permit, specified effluent levels of crude oil commingled with oilfield brine, i.e., "produced water," may be discharged into the Gulf of Mexico from the period October 1, 1993, through September 30, 1995. The record indicates that the clarification process occurs on the production platform where the produced water is separated from the combined produced water/crude oil liquid stream. The produced water undergoes final treatment in a petrolite treating unit and then is discharged overboard pursuant to NPDES permit GMG 290000. The record is undisputed that the discharge in question was due to the malfunctioning of the level controller on the overboard discharge line from the petrolite unit. The record does not indicate that the incident in question was a classical spill. Instead, the record evidences that the discharge was a discharge of produced water associated with NPDES permit GMG 290000 and the operation of the stated treatment technology. Although I am not convinced that the produced water was within the effluent ratio specified in the permit, I am convinced that the product was the produced water that Chevron is permitted to discharge and that the discharge was from a point source identified and permitted under the NPDES permit.

In enacting the 1978 revisions to the Act, the "Congressional Record" indicates that Congress sought to clarify jurisdiction over discharges of oil and hazardous substances from point sources with NPDES permits. Both the "Congressional Record," p. 37683 (October 14, 1978), and the preamble to the Environmental Protection Agency's proposed rule amending 40 CFR Part 110, 50 FR 9776 (March 11, 1985), show that the exclusion under § 1321(a)(2)(C) was intended to apply to "all such system upsets caused by control problems or operator error system failures or malfunctions, equipment or system startups or shutdowns, equipment washes . . . or treatment system upsets or failures at facilities with treatment systems capable of eliminating or abating such discharges." As the record shows the instant spill was caused by the failure or malfunction of the platform permitted treatment system, it was a discharge caused by a system upset due to control problems or system failures or malfunctions. Therefore, the instant spill is

considered a discharge pursuant to § 1321(a)(2)(C); not a discharge subject to the enforcement actions of § 1321(b)(3) even though the record is undisputed that the contaminated water caused a sheen in the Gulf of Mexico.

The violation and penalty for discharging oil in violation of 33 USC 1321(b)(3) are hereby dismissed. In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

A handwritten signature in blue ink, reading "Michael L. Emge".

MICHAEL L. EMGE  
Commander, U.S. Coast Guard  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commander, U.S. Coast Guard Atlantic Area (Ajs)  
Commander, Finance Center (OGR)